



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

May 19, 2003

Ms. Pamela Smith  
Assistant General Counsel  
Texas Department of Public Safety  
P. O. Box 4087  
Austin, Texas 78773-0001

OR2003-3339

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181428.

The Texas Department of Public Safety (the "department") received two requests from the same requestors for copies of specified checks, a specified contract, a "current budget," and the "most recent list of concealed weapons permit holders." The department received another request from a different requestor for a "list of individuals who have been granted a concealed weapons license in Texas by name, date of birth and address." You state that the department will be providing the first two requestors with all of the requested information to the extent that it exists, with the exception of the information that is responsive to the request for the list of concealed weapons permit holders.<sup>1</sup> You claim that the information pertaining to the list of concealed weapons permit holders is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted representative sample documents.<sup>2</sup>

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<sup>1</sup>We note that it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. See Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. See Attorney General Opinion H-90 (1973); see also Open Records Decision Nos. 87 (1975), 342 at 3 (1982), 416 at 5 (1984), 452 at 2-3 (1986), 555 at 1-2 (1990), 572 at 1 (1990); *Economic Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed). A governmental body must only make a good faith effort to relate a request to information which it holds. See Open Records Decision No. 561 at 8 (1990).

<sup>2</sup>We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this

You state that the requested list is excepted from disclosure pursuant to section 552.101 in conjunction with section 411.192 of the Government Code. Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes. Section 411.192 provides:

[t]he department shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. *The department shall, on written request and payment of a reasonable fee to cover costs of copying, disclose to any other individual whether a named individual or any individual whose full name is listed on a specified written list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, and zip code.* Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the open records law, Chapter 552, except that the applicant or license holder may be furnished a copy of disclosable records on request and the payment of a reasonable fee. The department shall notify a license holder of any request that is made for information relating to the license holder under this section and provide the name of the person or agency making the request. This section does not prohibit the department from making public and distributing to the public at no cost lists of individuals who are certified as qualified handgun instructors by the department.

Gov't Code § 411.192 (emphasis added). This section makes confidential all records that are maintained under subchapter H of chapter 411 of the Government Code, except as otherwise provided by that section or section 411.193.<sup>3</sup> *See* Gov't Code § 411.192. Section 411.192 also provides that the department shall disclose to any individual whether a named individual or any individual whose full name is listed on a specified written list is licensed under this subchapter, on written request and payment of a reasonable fee to cover costs of copying. The information on individuals that is subject to disclosure under section 411.192 includes an individual's name, date of birth, gender, race, and zip code. *See*

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office.

<sup>3</sup> Section 411.193 provides:

[t]he department shall make available, on request and payment of a reasonable fee to cover costs of copying, a statistical report that includes the number of licenses issued, denied, revoked, or suspended by the department during the preceding month, listed by age, gender, race, and zip code of the applicant or license holder.

Gov't Code § 411.193.

*id.* Thus, the language that requires the department to make such a disclosure to a requestor is an exception to the general rule of confidentiality expressed in section 411.192 regarding other records maintained under subchapter H.

You assert that any information contained in the department's files and records relating to an individual's licensure to carry a concealed handgun is confidential under section 411.192, with two exceptions. Specifically, you contend that the department is permitted to disclose: 1) whether a named individual or any individual whose full name is listed on a specified written list is licensed to carry a concealed handgun and 2) a statistical report that includes the number of licenses issued, denied, revoked, or suspended by the department during the month preceding the department's receipt of a request for information. You argue that, because none of the requestors in this instance has provided the department with any names of individuals, the requested list is confidential by law pursuant to section 411.192 of the Government Code. Based on our review of your arguments and the submitted information, we find that because none of the requestors in this instance has provided the department with an individual's name in compliance with section 411.192 the requested list is made confidential under section 411.192 and, thus, must be withheld from disclosure in its entirety pursuant to section 552.101 of the Government Code.<sup>4</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

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<sup>4</sup> We note that section 411.192 also requires that the department notify a license holder of any request that is made for information relating to the license holder and provide the name of the person or agency making the request. See Gov't Code § 411.192; see also 37 TAC § 6.113(b).

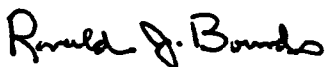
provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 181428

Enc. Submitted documents

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